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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 20

JAMES R. ELLIS, as President of the Yonkers Committee for Peace, an unincorporated association,
Petitioner,

—against—

WILLIAM DIXON, *et al.*, as members of the Board of Education of the City of Yonkers, etc.,
Respondents.

ON A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT.

BRIEF OF PETITIONER

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SUBJECT INDEX

PAGE

Opinions Below 1

Matters Related to Jurisdiction 2

(a) Statutory Provisions Sustaining Jurisdiction 2

(b) Timeliness 2

(c) Judgment Below Not Supported by Adequate Non-Federal Ground 3

(d) How Constitutional Questions Raised 4

(e) Federal Questions Were Necessarily Passed Upon 5

Statutes Involved 6

The Importance of This Case 7

Questions Presented 8

Errors Urged 8

Statement of the Case 9

Concerning Petitioner's Organization 10

The Aims and Purposes of Petitioner's Organization (R., fols. 16-21) 11

Summary of Argument 13

POINT I—Public property when made accessible for public speech and assembly becomes subject to constitutional guarantees and protection 14

Such Constitutional Protections Extend to Even Private Property 20

POINT II—Speech in public places cannot be subjected to the discretion of a licensor who acts without standards 21

POINT III—The statute does not provide a standard for issuance or refusal of a permit 24

PAGE

Point IV—The denial of the use of the public property for speech because the subject matter may be "controversial" is a denial of due process of law. 26

Introduction 26
On the Subject of Controversy 26
The Statute as Construed and Applied Is a Denial of Due Process on the Ground of Vagueness and Indefiniteness 28
The Statute and Regulation as Construed and Applied Are a Denial of Due Process in That They Create a Censorship of Speakers 31

Point V—There has been discrimination against petitioner 35

Point VI—The Courts below were in error 36

Conclusion 37

Appendix A—Opinion of Appellate Division 39

Appendix B—§ 414 of New York Education Law—Use of Schoolhouse and Grounds Out of School Hours 39

Appendix C—Rules and Regulations for Use of School Buildings and Grounds 41

Table of Cases Cited:

Brown v. *Board of Education of Topeka, etc.*, 98 L. Ed., p. 583 14
Buffalo v. *De Bon*, 232 App. Div. 318 3

Chopin v. *Board of Education*, 291 N. Y. 241 4
Cole v. *Arkansas*, 333 U. S. 196 4

Danskin v. *San Diego Unified School District* (1946), 28 Cal. (2nd) 536, 171 Pacific (2) 885,
7, 15, 16, 17, 18, 19, 20, 24
DeJonge v. *Oregon*, 299 U. S. 353 .....31, 32, 33

PAGE

Feiner v. *New York*, 340 U. S. 315 34

Hague v. *C. I. O.*, 307 U. S. 496 14
Halvajian v. *Board of Education of City of Inglewood*, October Term, 1950 7

Jamison v. *Texas*, 318 U. S. 413 14
Joseph Burstyn, Inc. v. *Wilson*, 303 N. Y. 242.....4, 30

Kunz v. *New York*, 340 U. S. 290 .....22, 23, 34, 35

Lederman v. *Board of Education*, 301 N. Y. 476 4
Levitch v. *Board of Education*, 243 N. Y. 373 ..... 3, 4
Lewis v. *Board of Education*, 258 N. Y. 117 4
Lovell v. *Griffen*, 303 U. S. 444 14
Lyon v. *Compton Union High School, etc.*, October Term, 1950, No. 627 7

Merchant, Matter of v. *Mead-Morrison Manufacturing Co.*, 252 N. Y. 284 2
Marsh v. *Alabama*, 66 S. Ct. 276 21
McKnight v. *The Board of Education*, October Term, 1950, No. 649 7
Murdock v. *Pennsylvania*, 319 U. S. 105 15

Niemotko v. *Maryland*, 340 U. S. 268 .....3, 22, 34, 36

Ohio Valley Water Co. v. *Ben Avon*, 253 U. S. 287.. 4
Oliver, Re, 233 U. S. 257 4

Prentis v. *Atlantic Coast Line*, 211 U. S. 210 4

Schneider v. *State*, 308 U. S. 147 15
Skinner v. *Oklahoma*, 316 U. S. 535 36
Sloat, Matter of v. *Board of Education*, 274 N. Y. 367. 4
State of Missouri ex rel. Gaines v. *Canada*, 305 U. S. 337 14
State of Ohio, ex rel. Greisinger v. *Grand Rapids Board of Education*, October Term, 1949 7

Terminiello v. *Chicago*, 337 U. S. 1 34
Thornhill v. *Alabama*, 310 U. S. 88 .....20, 21, 22

United States v. *Spector*, 343 U. S. 169 4

PAGE

West Virginia State Board of Education v. *Barnette*, 319 U. S. 624 ..... 33, 34

Whitney v. *California*, 274 U. S. 357 27

Winters v. *N. Y.*, 333 U. S. 507 30

Yick Wo v. *Hopkins*, 118 U. S. 356 36

OTHER AUTHORITIES CITED:

5 A. L. R. 886 21

7 A. L. R. 791 21

52 A. L. R. 249 21

86 A. L. R. 1181 21

161 A. L. R. 1308 21

Cohen, Morris—"Reason and Nature" page 173 28

Education Law of the State of New York:

Section 310 4

Section 414 ..... 6, 8, 9, 24, 25, 39, 40, 41

New York Civil Practice Act:

Section 592, subdivision 5 (a) 3

Section 592, subdivision 5 (c) 2

Section 1291 9

28 U. S. C. 1257(3) 2

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BRIEF OF PETITIONER

Opinions Below

The Appellate Division which was the last court in which a decision was had (the Court of Appeals having refused leave to appeal to it) wrote a memorandum opinion. The opinion is reported in 281 App. Div. 987, Case No. 4. The text is set forth in this brief in Appendix A. The Supreme Court, Westchester County, wrote an opinion which is contained in the Record, page 14.

It should be noted in connection with the opinions that although the Supreme Court, Westchester County, had held that the appeal to the courts was not the proper remedy, nevertheless the Appellate Division held it to be the proper remedy. But the Appellate Division affirmed on a different ground, to wit: that petitioner failed to show a legal right to relief.

Matters Related to Jurisdiction

(a) Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under 28 U. S. C. 1257 (3).

(b) Timeliness

The Court of Appeals of the State of New York, the highest court in the State, denied petitioner's motion for leave to appeal to it on October 22, 1953, 306 N. Y. page i, Advance Sheets November 14, 1953, No. 759. The denial of such motion is not an affirmance of the decision below. *Matter of Marchant* v. *Mead-Morrison Manufacturing Co.,* 252 N. Y. 284.

The original application to the Supreme Court of the State of New York was denied by order dated January 22, 1953. An appeal was taken to the Appellate Division of the Supreme Court which affirmed the order by its order dated April 20, 1953. A motion for leave to appeal to the Court of Appeals was brought on May 8, 1953. (Section 592, subdivision 5 (c), New York Civil Practice Act.) That Court denied the motion by order dated May 18, 1953 (281 App. Div. 1037). Thereafter, by motion dated and

served May 27, 1953, returnable the first available motion day, to wit: October 5, 1953, petitioner sought leave to appeal to the Court of Appeals (Section 592, subdivision 5 (a) New York Civil Practice Act). The Court of Appeals denied such leave on October 22, 1953. Thus, the Supreme Court of the State of New York, Appellate Division thereof, is the last court in which a decision could be had. *Niemotko* v. *Maryland*, 340 U. S. 268.

(c) Judgment Below Not Supported by Adequate Non-Federal Ground

At Special Term, in the Supreme Court, Westchester County, the Court in addition to holding that petitioner's subject of speech was "controversial", held that the petitioner's remedy was by way of appeal to the Commissioner of Education and not to the courts. Upon review of that order, the Appellate Division held however, "The proceeding was properly before the court." Thus, the only non-federal question was decided in petitioner's favor. It thus became the law of the case. *Buffalo* v. *De Bon*, 232 App. Div. 318.

The conclusion of the Appellate Division that the petitioner properly appealed to the courts was inescapable by reason of the decisions of the Supreme Court of the United States and of the highest courts of the State of New York.

The argument on this point ran as follows:

When we consider that the rule is that once the Commissioner of Education has ruled there can be no appeal to the Courts (see *Levitch* v. *Board of Edu-*

cation, 243 N. Y. 373; *Chapin* v. *Board of Education*, 291 N. Y. 241) how is a citizen to protect his constitutional rights? If he is debarred from pursuit of the protection of his constitutional rights in the Courts such procedure would be unconstitutional (*Re Oliver*, 233 U. S. 257; *Cole* v. *Arkansas*, 333 U. S. 196, 201); *United States* v. *Spector*, 343 U. S. 169, 172, 178-180; *Ohio Valley Water Co.* v. *Ben Avon*, 253 U. S. 287; *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 228.

In *Matter of Sloat* v. *Board of Education*, 274 N. Y. 367, 370, 374 the right to appeal to the Courts was sustained for relief from the arbitrary acts of the Board of Education.

Lederman v. *Board of Education*, 301 N. Y. 476—where an attack was made on the constitutionality of Section 3022 Education Law. No review under Section 310 Education Law by the Commissioner was had or required.

Burstyn v. *Wilson*, 303 N. Y. 242, where an attack was made upon the reasonableness of the discretionary ruling barring a motion picture from exhibition. No review was required by the Commissioner.

Lewis v. *Board of Education*, 258 N. Y. 117, was an action to restrain the purchase and use of religious books in schools. No resort to the Commissioner was required as the exclusive remedy.

(d) How Constitutional Questions Raised

In Record, folios 33, 34, it is alleged in Petitioner's petition to Supreme Court, Westchester County, that the rights of petitioner and his organization under the

Constitution of the United States have been denied. These facts are adverted to in the opinion of the Supreme Court (R., fol. 42).

(e) Federal Questions Were Necessarily Passed Upon

The Appellate Division, the highest court in which a decision could be had, necessarily passed upon the Federal Constitution question raised. In the Supreme Court, Westchester County, petitioner alleged (R., fols. 33, 34) that he was denied the right to use the public place for public speaking and assembly and that such denial constituted a discrimination against him in that others were permitted to speak, and he further alleged (R., fol. 34) that the action of the respondents violated his right of freedom of speech and assembly as guaranteed by the Constitution of the United States and denied him the equal protection of the laws. In the Supreme Court, it was held (R., fol. 42) that these constitutional questions were raised, but because the right to grant the use of public property was discretionary with the respondents, the petitioner had no legal basis to assert that his constitutional rights were impaired (R., fols. 45-57). In this connection, the court also stated, that since the object of petitioner's organization and the proposed subject of speech were controversial, then the discretion was not arbitrarily exercised (R., fol. 49).

The Appellate Division agreed with this holding in its opinion that the petitioner does not show a clear legal right to relief.

It thus follows that both courts below negated petitioner's claim that he had a constitutional right to public assembly and speech on public property with-

out censorship against his subject matter or without discrimination against his organization exercised under the guise of discretion. It was and is petitioner's claim under the Federal Constitution, that the local authorities had no discretion to withhold the use of public property for public speech and assembly when they had dedicated, or at least, made accessible such public property for such uses; and if they granted such uses to other persons and organizations, they could not discriminate as a matter of law against the petitioner or against the subject matter of his proposed speech. The rulings in the State courts have inescapably passed upon the Federal questions thus raised by denying that petitioner had such legal right.

Statutes Involved

This case draws into question the validity of state legislation as construed, known as Section 414 Education Law of the State of New York and the "Rules and Regulations for Use of School Buildings and Grounds, Yonkers Board of Education". A copy of said statute is set forth as Appendix B to this statement.

The "Rules and Regulations for Use of School Buildings and Grounds, Yonkers Board of Education" are annexed hereto as Appendix C.

The statute and rules were construed and applied by the Supreme Court, Westchester County to the admitted allegations of fact of the petition (since no answer was served) so as to mean that no subject of a "controversial" nature may be presented at a forum in public school property.

Although the Supreme Court, Westchester County had also ruled that the procedure in this instance should not have been by appeal to the courts, nevertheless, the Appellate Division held the contrary, and held that the remedy by appeal to the courts was proper.

As so construed and applied, the statute and rules impaired petitioner's right of freedom of speech and assembly in that the word "controversial" is indefinite and uncertain and furthermore was discriminatory against petitioner's organization, since other organizations could use the property without hindrance in that respect.

The Importance of This Case

This Court has never passed upon this serious question of free speech which is becoming recurrent (see *State of Ohio, ex rel. Greisinger* v. *Grand Rapids Board of Education*, October Term, 1949; *Halvajian* v. *Board of Education of City of Inglewood*, October Term, 1950; *Lyon* v. *Compton Union High School, etc.*, October Term, 1950, No. 627; *McKnight* v. *The Board of Education*, October Term, 1950, No. 649). Those cases involve the delicate question of the separation of church and state, since a religious group sought the use of the public building for speaking. This case is free of the question of the use for a religious purpose.

The importance of this case is further emphasized by the fact, that the highest court of California in *Danskin* v. *San Diego Unified School District* (1946), 28 Cal. (2nd) 536, held squarely contrary to the decision in this case.

Questions Presented

1. Does the construction and application of Section 414 of the Education Law of the State of New York and the "Rules and Regulations for Use of School Buildings and Grounds, Yonkers Board of Education" so as to prohibit assembly and public speaking by petitioner and his organization in the school buildings of Yonkers, New York, when not in use for school purposes, abridge petitioner's freedoms of assembly and speech contrary to the First and Fourteenth Amendments to the Constitution of the United States?

2. Does the construction and application of Section 414 of the Education Law of the State of New York and the "Rules and Regulations for Use of School Buildings and Grounds, Yonkers Board of Education" so as to prevent assemblies by Petitioner and his organization for public speaking on the subject of peace, while allowing meetings, forums and public discussions by other organizations as an accepted practice?

Errors Urged

1. The Court of last resort in which a decision could be had herein has in effect decided federal questions of substance not in accordance with applicable decisions of this Court, in that:

A. It held that the municipality had unlimited discretion, without standards, to permit or bar a speaker, though it had granted and made accessible the use of school buildings to the public for public speech.

B. It held that the "controversial" nature of speech permits the public officer to bar such speech.

C. It held that the denial of the use by petitioner for a public forum of the public building, although granted to others for public speaking, was not a denial of the equal protection of the laws.

Statement of the Case

The petition alleges that it is an unincorporated association composed of citizens of Yonkers and Westchester County and sought to obtain the use of school facilities to hold a forum on the subject of peace. Application was made more than once and each time denied (R., fols. 22-30). Petitioner attempted to obtain the reason for refusal so that compliance with the requirements could be made. But the reason was refused (R., fols. 24, 30).

The City of Yonkers, pursuant to Section 414 of the Education Law adopted regulations for the use of the school property during after-school hours by organizations such as petitioner (R., fol. 30, see Appendix C). The petition alleges that the respondents, pursuant to such regulations, has permitted other organizations the use of such school property on so many numerous occasions (whose numbers are best known to respondents) that it has become an accepted practice (R., fol. 32).

The respondents did not file an answer as required by Section 1291, Civil Practice Act of New York, and therefore the allegations of the petition must be deemed admitted (Section 1291).

Therefore, the petitioner asserts the organization has been deprived of the equal protection of the laws in violation of the Constitution of the United States and has been deprived of the right of freedom of speech and assembly as guaranteed by the Constitution of the United States (R., fols. 33, 34).

Concerning Petitioner's Organization

Respondents in their brief in opposition to the petition for the writ of certiorari stated (p. 6):

> "Unquestionably the respondents had knowledge of the fact that a forum held by the Yonkers Committee for Peace at the Young Women's Christian Association in the City of Yonkers on November 19th, 1951, created considerable dissatisfaction and criticism among some of the citizens and veterans organizations of the City, the forum having been publicized in many issues of the local newspaper before and after it was held and took this into consideration when they refused to grant permission to petitioner's organization for the use of school property to hold a forum for a discussion on war and peace. The objects and purposes of petitioner's organization, as set forth in the petition (R., fols. 16-20) and the proposed subject of the forum discussions are, as pointed out in the opinion of the New York Supreme Court, Westchester County (R., fols. 41-55), of an essentially controversial nature."

This not only reveals the motives for the denial of the permit which had previously been marked by si-

lence (R., fol. 32), but it introduces facts, not appearing in the record that should be contradicted here.

The meeting referred to by respondents was held on November 19, 1951 at the Young Women's Christian Association in Yonkers. The meeting was addressed on the subject of peace by Stephen G. Gary, a well-known Quaker. The meeting was also addressed and chaired by Dr. G. James Fleming.

A vigilante-minded group tried to prevent the meeting from taking place, but the Young Women's Christian Association in Yonkers stood fast, to its great credit and permitted the forum to be held.

At sermons, the pastor of the First Presbyterian Church North Broadway of Yonkers and the pastor of the Church of the Redeemer of Yonkers characterized the action of the Young Women's Christian Association of Yonkers as mature thinking and a courageous stand against the assumption of vigilante powers. The meeting was held without any physical disturbance or inconvenience to the public.

The Aims and Purposes of Petitioner's Organization (R., fols. 16-21)

Petitioner's association was formed among residents and citizens of the City of Yonkers and of Westchester County for the object of arranging forums for the discussion of problems relating to peace against war. The objects of this group can best be stated from the statement of purposes of the organization which was drafted at the time it was organized:

"We have a choice between life in peace, or

death by war. There is no third choice. In the event of an atomic war, the front line will not be thousands of miles away but right at our front doors. You may be a victim.

We realize that there are differing views on the causes and solutions of the world's troubles, but we firmly believe that war is not the cure for any of them. Winter, Spring, Summer and Fall are inevitable. We believe that war is not. War is man-made and can be undone by man.

This is our aim; this is our cause * * * STOP WAR. Here is how we think it can be done.

1. As Americans we have the privilege of letting our representatives in Washington know how we feel about any matter. The price of a postcard is the cost to you. It's a very good investment.

2. We also have the right to let the press and radio know of our feelings toward any of their propaganda drives. Right now they are drumming for war. Let them know how you feel about it.

3. It is our privilege and our duty to hear both sides of every issue before making a decision. Your daily press is one side of this war issue. Any of numerous peace groups in every section of our land can give you the other side.

4. Taxes are collected by the government to improve the welfare of the American people. For our tax money we can have armed camps throughout the entire world, or better schools, better homes and lower living costs. Which do you want? Let your Congressman know, your friends

and everyone you come in contact with. This is our birthright, and to fear open discussion is more un-American than any difference of opinion amongst us could possibly be.

This country of the people, by the people, and for the people shall indeed remain free if we all exercise our rights as citizens."

Summary of Argument

(1) Public property when made accessible for public speech and assembly becomes subject to constitutional guarantees and protection.

(2) Such guarantees of free speech and assembly preclude the denial of the right to speak or assemble by a board or licensor who acts without any standards.

(3) There is no standard in the text of the statute for a denial of a permit on the ground that the subject matter is "controversial".

(4) The statute as construed by the Court to bar "controversial" subjects is a denial of due process in that (a) it is vague, indefinite and uncertain, and (b) it is censorship in advance.

(5) There has been discrimination against the petitioner in denying him a public forum when such forums were accessible to others.

(6) The Courts below were therefore in error in holding that the petitioner has not shown a right to relief.

(7) Conclusion.

POINT I

Public property when made accessible for public speech and assembly becomes subject to constitutional guarantees and protection.

The State need not make public property, like schools, available for use by the public for assembly and speech, but if it makes them available constitutional protections attach.

In *Lovell* v. *Griffin,* 303 U. S. 444, this court held that a municipality cannot bar completely the dissemination of political ideas on sidewalks and public places, nor make that right dependent on a permit to be issued by an official who can grant or deny it as his discretion without any standards for control.

In *Jamison* v. *Texas,* 318 U. S. 413, it was held that an ordinance cannot completely prohibit dissemination of ideas on streets because the municipality owns the title to the streets.

See also to the same effect:

Hague v. *C. I. O.,* 307 U. S. 496, where the broad rule was enunciated, protecting speech and assembly in the streets.

Gaines v. *Canada,* 305 U. S. 337, holding that schools established by the state were required to fulfill constitutional guarantees against discrimination (now fortified by the historical decision in *Brown* v. *Board of Education of Topeka, etc.,* 98 L. Ed., p. 583).

Murdock v. *Pennsylvania*, 319 U. S. 105, where as tax on religious books vendors was held void.

Schneider v. *State*, 308 U. S. 147, deciding that although the state may regulate the conduct of those who use streets for purposes other than movement on them, nevertheless, such regulations may not abridge constitutional guarantees.

In *Danskin* v. *San Diego Unified School, Dist.* (S. Ct. 1946), 28 Calif. (2nd Series) 536, 171 Pacific (2) 885, a mandamous proceeding was brought to compel school board to grant permission to petitioners to use school auditorium without conditions.

Petitioners applied for permission to use the school auditorium on the general theme "Bill of Rights in Postwar America". The Board granted permission on condition that the applicants subscribe an oath that the applicant is not affiliated with any organization that advocates the overthrow of the present Government of the United States by force. Petitioners refused to comply, on the ground that it violated the Constitution of the United States.

In California it is provided that school auditoriums may be used for the discussion of any subject of educational, political or economic interest. The statutes also provide that such use cannot be made by any individual or organization whose object is that of overthrowing or advocating the overthrowing the Government of the United States by force. The governing board is prohibited from granting the use of auditorium to such persons or organizations.

It was held nevertheless that freedom of speech cannot be impaired unless a clear and present danger

exists and that to condition a permit on the connections or affiliations of a person is a violation of the protections of speech.

"The state is under no duty to make school buildings available for public meetings. If it elects to do so, however, it cannot arbitrarily prevent any members of the public from holding such meetings. *State of Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, see *Marsh* v. *Alabama*, 66 S. Ct. 276. Nor can it make the privilege of holding them dependent on conditions that would deprive any members of the public of their constitutional rights. A state is without power to impose an unconstitutional requirement as a condition for granting a privilege even though the privilege is the use of state property. *Frost* v. *Railroad Commission of California*, 271 U. S. 583, 594; *Hague* v. *C. I. O.*, 307 U. S. 496, 515; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 110, 111." . . .

"The convictions or affiliations of one who requests the use of a school building as a forum is of no more concern to the school administrators than to a superintendent of parks or streets if the forum is the green or market place" . . .

"The very purpose of a forum is the interchange of ideas, and that purpose cannot be frustrated by a censorship that would label certain convictions and affiliations, suspect, denying the privilege of assembly to those who held them, but granting them to those whose convictions and affiliations happened to be acceptable and in effect amplifying their privilege by making it a special one."

"The privilege of using a school building as a public forum is one too valuable to be given lightly or

lightly taken away. It is also too valuable lightly to be received. It can be lost to the whole community if some persons or groups abuse it frivolously, maliciously or dangerously. The state must be on the alert for any clear and present danger to the community, sensative to the warning signals, the ambiance in which a forum is planned, the atmosphere that envelops it. It cannot look with equanimity upon those whose words or actions have already left in their wake a trail of violence."

"Always it must distinguish, however, between speech, no matter how unorthodox, that remains on a theoretical plane, and speech, no matter how skillfully intoned, that creates a clear and present danger to the community. 'There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion and the calm processes of thought and reason. *Cf. Bridges* v. *California* (1941), 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (159 A. L. R. 1346), and Justice Brandeis' concurring opinion *Whitney* v. *California,* 274 U. S. 357, 372-380, 47 S. Ct. 641, 647-650, 71 L. Ed. 1095.' See also, *Taylor* v. *Mississippi* (1942), 319 U. S. 583, 63 S. Ct. 1200, 87 L. Ed. 1600; *Schneiderman* v. *United States,* 320 U. S. 118, 157, 63 S. Ct. 1333, 87 L. Ed. 1796."

Justice Carter who concurred stated the following

which seems more pointed toward a determination of the issues of this case:

> "As I see the question presented here, it is whether or not the Legislature may authorize the use of school property as a civic center and at the same time place it within the power of the governing school board to deny permission for the use of said property to persons who may be affiliated with organizations which the Legislature has declared to constitute a subversive element. The effect of such legislation is to permit a prior censorship on the right of assembly and expression. In my opinion this cannot be done without violating the provisions of the First and Fourteenth Amendments to the Constitution of the United States. The First Amendment unqualifiedly guarantees freedom of speech and freedom of assembly. No restriction on the exercise of these rights is mentioned in the Constitution or the amendments thereto. The restrictions which have been placed upon these rights are found in the judicial decisions interpreting the provisions above mentioned. In *Schenck* v. *United States*, 249 U. S. 47, at page 52, 39 S. Ct. 247, at page 249, 63 L. Ed. 470, Mr. Justice Holmes said: 'The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, 439, 31 S. Ct. 492, 55 L. Ed. 797, 34 L. R. A., N. S. 874. The question in every case is whether the words are used in such circumstances and are of such a nature as to create

a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent. It is a question of proximity and degree.' The clear and present danger rule has been followed and applied by the Supreme Court of the United States in numerous decisions in the interpretation of statutes designed to proscribe the rights of freedom of speech and of assembly under varying circumstances and conditions. The trend of these decisions as disclosed by the citations thereof in the opinion prepared by Mr. Justice TRAYNOR in this case is toward a more liberal application of the provisions of the First and Fourteenth Amendments of the Constitution of the United States to the end that freedom of speech and of assembly may not be denied to persons because of their affiliation with organizations declared by a state to constitute a subversive element. This thought was clearly expressed by Chief Justice Hughes in *DeJonge v. Oregon*, 299 U. S. 353, 57 S. Ct. 255, 260, 81 L. Ed. 278, where he said: 'We are not called upon to review the findings of the state court as to the objectives of the Communist Party. Notwithstanding these objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceable assembly having a lawful purpose, although called by that party.'

I can see no escape from the proposition that if membership in or affiliation with the organization declared to constitute a subversive element does not deprive one of his right to freedom of speech or of assembly, it is then beyond the power of the Legislature to authorize restrictions against the use of school property which will prevent such

persons from using such property in the same manner as other members of the public may be permitted to use the same in the exercise of their rights of speech and assembly."

Such Constitutional Protections Extend to Even Private Property

To emphasize and illustrate the point just made, reference is made to those cases where it was held that even where speech and assembly was made accessible on private property, then constitutional guarantees applied.

In *Thornhill* v. *Alabama,* 310 U. S. 88, where picketing took place on private property this Court held that the right of freedom of speech was not only guaranteed on public property, but also on private. Said this Court:

"It is not enough to say that § 3448 is limited or restricted in its application to such activity as takes place on the scene of the labor dispute. '(The) streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.' *Schneider* v. *State,* 308 U. S. 147, 161, 163; *Hague* v. *C. I. O.,* 307 U. S. 496, 515-16. The danger of breach of the peace or serious invasion of rights of property or privacy at the scene of a labor dispute is not sufficiently imminent in all cases to warrant the legislature in determining that such place is not appropriate for the range of activities outlawed by § 3448."

Marsh v. *Alabama*, 326 U. S. 501, involved a conviction for distributing literature on privately owned property. The Court there observed (pp. 505-506):

> "We do not agree that the corporation's property interests settle the question. * * * Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

See also: 5 A. L. R. 886, 7 A. L. R. 791, 52 A. L. R. 249, 86 A. L. R. 1181, 161 A. L. R. 1308.

The City of Yonkers has made schools available for public speech in accordance with the authority of the statute (R., fol. 30; Appendices B and C, hereto). It therefore follows that the action of the City of Yonkers, acting through the respondents was circumscribed by constitutional inhibitions.

POINT II

Speech in public places cannot be subjected to the discretion of a licensor who acts without standards.

The general statement on the subject is found in *Thornhill* v. *Alabama, supra,* where this Court stated:

> "The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure

comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion."

In *Niemotko* v. *Maryland*, 340 U. S. 268, it was held that speech in public places cannot be denied by a licensor acting without standards.

In *Kunz* v. *New York*, 340 U. S. 290, decided the same day, this Court held that a license cannot be refused for speech on the street when the discretion of the administrative official is not defined. This Court there said:

"In considering the right of a municipality to control the use of public streets for the expression of religious views, we start with the words of Mr. Justice Roberts that 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' *Hague* v. *C. I. O.*, 307 U. S. 496, 515, 83 L. ed. 1423, 1436, 59 S. Ct. 594 (1939). Although this Court has recognized that a statute may be enacted which prevents serious inference with normal usage of streets and parks, *Cox* v. *New Hampshire*, 312 U. S. 569, 85 L. ed. 1049, 61 S. Ct. 762, 133 A. L. R. 1396 (1941), we have consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unre-

lated to proper regulation of public places. In *Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352 (1940), this Court held invalid an ordinance which required a license for soliciting money for religious causes. Speaking for a unanimous Court, Mr. Justice Roberts said: 'But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.' 310 U. S. at 307. To the same effect are *Lovell* v. *Griffin*, 303 U. S. 444, 82 L. ed. 949, 58 S. Ct. 666 (1938); *Hague* v. *C. I. O.*, 307 U. S. 496, 83 L. ed. 1423, 59 S. Ct. 954 (1939); *Largent* v. *Texas*, 318 U. S. 418, 87 L. ed. 873, 63 S. Ct. 667 (1943). In *Saia* v. *New York*, 334 U. S. 558 (1948), we reaffirmed the invalidity of such prior restraints upon the right to speak: 'We hold that § 3 of this ordinance is unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the First Amendment which is protected by the Fourteenth Amendment against State action. To use a loudspeaker or amplifier one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion."

POINT III

The statute does not provide a standard for issuance or refusal of a permit.

By Section 414 Education Law of the State of New York (Appendix B hereto) it is provided that the boards of education may adopt regulations for use of school buildings for various uses, when not in use for strictly school purposes. It lists several uses. Among them are the following which are pertinent to the issues of this case:

"1. For the purpose of instruction in any branch of education, learning or the arts.

* * * *

3. For holding social, civic and recreational meetings and entertainments and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be nonexclusive and shall be open to the general public."

* * * *

The statute does not discriminate among persons or organizations, as did the California statute in the *Danskin* case *supra.*

The statute does not provide any standards by which a board may determine which persons may use the facilities for the purposes just enumerated.

Indeed, to fill this need the Yonkers Board of Education in its Rules (Appendix C hereto) subdivision 25 arrogated to itself unlimited power and discretion to decide upon its use. That subdivision states:

"25. The Board of Education expressly re-

> serves the right to refuse, deny or revoke the right to use public school property, whenever, or wherever such action or refusal is deemed by the Board of Education, in its sole judgment, to be in the best interests of the public schools."

Thus the respondents have stated that it may refuse the use at any time it decided or pleased.

This, it is evident, is discretion run riot. It is not a discretion fettered with rules of law. It is a proclamation that the board can act at its whim or as arbitrarily as it deemed fit.

The respondent's brief in opposition to the petition for a writ does not set forth any standards that define or localize the action of the respondents. In fact, it confesses such lack of standards. It argues that these respondents have sole discretion in the matter, and therefore, the petitioner has no rights about which he may complain.

The only assertion by respondents that touches on standards is the plea that the statute should be construed to bar controversial issues.

The Court at Special Term similarly did not state any standards that control, other than his construction that the board had absolute discretion (R., fol. 44). He cited the statute for support. But the statute does not so state. It states on the contrary, that the board may make regulations, but such regulations shall not be inconsistent with the statute.

The conclusion is therefore inescapable that the text of Section 414 does not fix any standards. Nor does it provide that controversial persons and subjects may be excluded, as Special Term ruled (R., fol. 45).

POINT IV

The denial of the use of the public property for speech because the subject matter may be "controversial" is a denial of due process of law.

Introduction

The Bill of Rights, which is the quintessence of all the ethical teachings over the centuries, tells us that a person should have a right to talk on any subject he wishes, so long as the speaker does not incite to riot, incite to unlawful conduct or arouse to lust. Yet, it is interesting to note how plagued a person may be with prolonged litigation in order to obtain such a simple right. In this case, the Supreme Court, Westchester County, Special Term was moved by the fear that the subject matter might be "controversial" —as if controversy were some sort of taboo, and construed the statutes as forbidding the use of school property for "controversial discussions".

On the Subject of Controversy

Since the Supreme Court, Westchester County, was influenced by what it thought to be the character of the forum, it may be profitable to examine the subject of "controversy". It is surprising that a Court should be afraid of a discussion that is "controversial". Lawyers and judges, of all people should know that controversy is the generating source of truth. The daily contentions of lawyers with propositions are indulged so that truth may be determined. Judges

discuss and contend with each other in conference rooms so that truth might be ascertained. The conclusion that can be drawn is that controversy is a most desirable form of intellectual exercise, and should be encouraged. Why, therefore, this fear of this most efficient and healthy approach to truth?

Judge Brandeis put it down in memorable words:

> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may be fall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. *Whitney* v. *California*, 274 U. S. 357, 375."

Assuming that a speaker's words were intended as the acts of a fifth columnist. Isn't it better that we know what the speaker stands for? That is what the Constitution intended. That is what Judge Brandeis meant. That is the American way. Open debate is not only a safety valve, in a cathartic sense, but is a guide to the safety of the Republic, because we learn, openly, the views of those who are for us, and those

who are against us. The substitution of brawn for brain, or the suppression of speech leads to furtive activities.

Assuming that school facilities cannot be used for speech on a "controversial" subject, the test then is, how do we know when it is "controversial"? The Supreme Court, Westchester County, said the proposed subject, discussion of peace and war, were of a controversial nature. Where does one draw the line? If a discussion of peace can be controversial, then there seems to be nothing that can be without controversy. Even the discussion of formal and accepted truths of mathematics can be controversial. For instance, the axiom that parallel lines never meet, —a fact we all accept, has been the subject of debate among non-Euclidean mathematicians, who contend that they meet at infinity (Morris Cohen—"Reason and Nature" p. 173). What, therefore, can be left for a forum to discuss? The answer is that controversy exists in everything. *It depends upon who the speaker is and who the listener is.* If a listener accepts everything a speaker says, there can be no controversy.

Therefore, the criterion for determining the grant of the use of the premises upon the basis of lack of controversial subject matter has no basis in sound sense.

The Statute as Construed and Applied Is a Denial of Due Process on the Ground of Vagueness and Indefiniteness

The Supreme Court, Westchester County, construed the statute to authorize the denial of permission to

use school property for speech when the subject is "controversial".

The Court said (R., fol. 45):

> "Many factors may be taken into consideration by the administrative body in making its determination. The board is presumed to have knowledge of local conditions and to know the sentiment of the taxpayers and voters in the district. Assuming that a proposed use is in itself legitimate, a board of education may still find that the sentiment of the community is divided as to the propriety of the use and may properly refuse a request, the granting of which would result in dissatisfaction and criticism (*Matter of Women's Civic Club of Katonah, Inc.,* 31 State Dept. Rep., 396, 397; *Matter of Vernon High School Alumni Association,* 15 State Dept. Rep., 476).
>
> In this connection a quotation from Appeal of American Civil Liberties Union (36 State Dept. Rep., 97, 98) is apropos. It was there stated: 'Schools are established and maintained for a definite and specific purpose, to wit, the secular education of the youth of the State, and any activity within the scope of that purpose or tending to promote the welfare of the schools and the community should be allowed and encouraged. On the other hand, any activity which is not embraced in the general school program and which is of a controversial nature liable to arouse ill feeling, jealousy or dissension, or to lead to misunderstanding, should be rigidly debarred. By pursuing this policy in the past our public schools have maintained the confidence and respect of all elements, classes, creeds and factions. The

> public schools are supported by the whole body of citizens; within their walls assemble the children of the rich and the poor, the children of parents of every shade of religious belief and unbelief. The children of almost every race and color. Therefore, nothing that will tend to foster intolerance, bigotry, animosity or dissension should be allowed to inject itself into the public school system of this great State.'
>
> The objects and purposes of petitioner's organization as set forth in the petition, and the proposed subject of the forum discussions impress this Court as being of an essentially controversial nature."

There is no proof in the record as to what the subject of the meeting was going to be. Nevertheless, even if it were known, then to characterize it as "controversial" is to fix no standard, because it is uncertain, indefinite and vague. What is "controversial" may cover the gamut of all speech and literature. It has a kinship of vagueness with that condemned in *Winters* v. *New York,* 333 U. S. 507, where this Court struck down for uncertainty, a statute penalizing publications, principally made up and massed together of stories of crime, bloodshed and lust. See also *Joseph Burstyn, Inc.* v. *Wilson,* 343 U. S. 495.

It, therefore, cannot be urged that a standard exists that governs the discretion of the respondents. From a practical standpoint, respondents could say in advance that any speech would be controversial. If in this instance they announce that a discussion of *peace* would be controversial, then what limit is there to this unfettered discretion that respondents assert?

The Statute and Regulation as Construed and Applied Are a Denial of Due Process in That They Create a Censorship of Speakers

(a) If the forum is denied because the subject matter is "controversial" in the sense that emotions may be aroused or exception taken to a speaker's utterances, then such construction and application of the law runs afoul of prior rulings of this Court.

In *DeJonge* v. *Oregon,* 299 U. S. 353, this Court said:

> "While the States are entitled to protect themselves from the abuse of the privileges of our institutions through an attempted substitution of force and violence in the place of peaceful political action in order to effect revolutionary changes in government, none of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application * * * Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment to the Federal Constitution * * * The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. As this Court said in *United States* v. *Cruikshank,* 92 U. S. 542, 552, 23 L. Ed. 588: 'The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.' The First Amendment of the Federal Constitution expressly guarantees that right against abridgement by

Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions—principles which the Fourteenth Amendment embodies in the general terms of its due process clause. *Hebert* v. *Louisiana,* 272 U. S. 312, 316, 47 S. Ct. 103, 71 L. Ed. 270, 48 A. L. R. 1102; *Powell* v. *Alabama,* 287 U. S. 45, 67, 53 S. Ct. 55, 63, 77 L. Ed. 158, 84 A. L. R. 527; *Grosjean* v. *American Press Co.* (297 U. S. 233, 56 S Ct. 44, 80 L. Ed. 660), *supra.* These rights may be abused by using speech or assembly in order to incite violence and crime. The people through their Legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government * * * The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights

of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offense, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge. We are not called upon to review the findings of the state court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceable assembly having a lawful purpose, although called by that party."

In *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, at p. 640, this Court said:

"Struggle to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men."

At page 642:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics,

nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

See also:

Terminiello v. *Chicago,* 337 U. S. 1;
Feiner v. *New York,* 340 U. S. 315;
Niemotko v. *Maryland,* 340 U. S. 268.

(b) The odd part of the application of the statute and regulations, as construed, to this petitioner is that there is nothing in the record to show what the subject of the speech was going to be. All that Special Term relied upon to determine that the subject was going to be "controversial" was the fact that the *objects* of the organization was to talk on peace and war. The talk might have been as peaceful and free from disturbance as on the day the Quakers spoke at the Young Women's Christian Association, above referred to. For the respondents and Special Term to conclude without proof what the subject was going to be is sheer censorship without the slightest foundation.

(c) Assuming the meeting at the Young Women's Christian Association had the character the respondents give it then, it is submitted, that this Court held also in the *Kunz* case, above, that disorderly prior utterances or reactions of listeners does not warrant suppression of the use of public property for speaking.

Said this Court:

"The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings

had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence. 'In the present case, we have no occasion to inquire as to the permissible scope of subsequent punishment.' *Near* v. *Minnesota,* 283 U. S. 697, 715, 75 L. Ed. 1357, 1367, 51 S. Ct. 625 (1931). We do not express any opinion on the propriety of punitive remedies which the New York authorities may utilize. We are here concerned with suppression—not punishment. It is sufficient to say that New York cannot vest restraining control over the right to speak on religious subjects in an administrative official where there are no appropriate standards to guide his action."

POINT V

There has been discrimination against petitioner.

The Respondents have been arbitrary in denying the use of the school not only because they refused to give a reason for the denial, not only because the subject of the forum may be or is "controversial", but because nothing in the law permits them to deny the use to the petitioner's organization where they have been granted to so many others. Paragraph "15" of the petition (R., fol. 31) alleges that organizations similar to petitioner's have been granted permission to use the schoolhouses of Yonkers for public forums on innumerable occasions. The failure by respondents to deny paragraph "15" of the petition

is an admission of the use to which the school properties have been put. Since no reason was given why the petitioner has been selected for denial, it is obviously a discrimination.

The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. *Yick Wo* v. *Hopkins,* 118 U. S. 356, at page 374.

Nor is there anything in the record that shows a reason for such discrimination other than the argument of counsel and the opinion of Special Term that the subject of peace is "controversial". It is thus an unconstitutional discrimination forbidden by the Federal Constitution. *Yick Wo* v. *Hopkins,* 118 U. S. 356 at 369; *Niemotko* v. *Maryland,* 340 U. S. 268, *Skinner* v. *Oklahoma,* 316 U. S. 535.

POINT VI

The Courts below were in error.

The Courts below grounded their rulings on the unlimited discretion of the respondents to deny the use sought. Therefore, they concluded, the petitioner showed no clear legal right to relief. Accordingly, the petition for a mandamus order was denied.

Since it has been demonstrated that the acts of the respondents in denying the facilities to petitioner was a denial of their constitutional rights of speech and assembly, the petitioner has shown a legal right to relief.

CONCLUSION

The order below should therefore be reversed, and this Court should remand the case to the Court below, to make an order not inconsistent with this Court's determination in accordance with the points urged herein.

New York, New York, August 23, 1954.

Respectfully submitted,

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APPENDIX A

Opinion of Appellate Division

281 App. Div. 987, Case No. 4.

Matter of Ellis, ap (Dixon, Jr., res)—In a proceeding under article 78 of the Civil Practice Act to compel respondents to grant permission for the use of a school building by an unincorporated association of which petitioner is president, petitioner appeals from an order which denied his application and which granted respondents' cross-motion to dismiss the petitioner. Order unanimously affirmed, with $10 costs and disbursements. The proceeding was properly before the court. However, the petition does not allege facts which establish a clear legal right to the relief sought nor which establish that respondents failed to perform a duty enjoined by law.

APPENDIX B

§ 414. Use of Schoolhouse and Grounds Out of School Hours

Schoolhouses and the grounds connected therewith and all property belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such school-houses, grounds or other property, when not in use for school purposes, for such other public purposes as are herein provided. Such regulations shall not conflict with the provisions of this chapter and shall conform to the purposes and intent of this section and shall be subject to review on appeal to the commissioner of education as provided by law. The trustees or

board of education of each district may, subject to regulations adopted as above provided, permit the use of the schoolhouse and rooms therein, and the grounds and other property of the district when not in use for school purposes, for any of the following purposes:

1. For the purpose of instruction in any branch of education, learning or the arts.

2. For public library purposes, subject to the provisions of this chapter, or as stations of public libraries.

3. For holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be nonexclusive and shall be open to the general public.

4. For meetings, entertainments and occasions where admission fees are charged, when the proceeds thereof are to be expended for an educational or charitable purpose; but such use shall not be permitted if such meetings, entertainments and occasions are under the exclusive control, and the said proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination, or of a fraternal, secret or exclusive society or organization other than organizations of veterans of the military, naval and marine service of United States and organizations of volunteer firemen.

5. For polling places for holding primaries and elections and for the registration of voters and for holding political meetings. But no political meetings shall be permitted unless authorized by a vote of a district meeting, held as provided by law, or, in cities by the board of education thereof. Except in cities, it shall be the duty of the trustees or board of education to call a special meeting for such purpose upon the petition of at least ten per centum of the qualified electors of the district. Authority so

granted shall continue until revoked in like manner and by the same body as granted.

6. For civic forums and community centers. Upon the petition of at least twenty-five citizens residing within the district or city, the trustees or board of education in each school district or city shall organize and conduct community centers for civic purposes, and civic forums in the several school districts and cities, to promote and advance principles of Americanism among the residents of the state. The trustees or board of education in each school district or city, when organizing such community centers or civic forums, shall provide funds for the maintenance and support of such community centers and civic forums, and shall prescribe regulations for their conduct and supervision, provided that nothing herein contained shall prohibit the trustees of such school district or the board of education to prescribe and adopt rules and regulations to make such community centers or civic forums self-supporting as far as practicable. Such community centers and civic forums shall be at all times under the control of the trustees or board of education in each school district or city, and shall be nonexclusive and open to the general public.

APPENDIX C

Rules and Regulations for Use of School Buildings and Grounds

YONKERS BOARD OF EDUCATION
YONKERS, N. Y.

1. All applications for the use of public school buildings and grounds shall be made in writing upon the forms of the Board of Education and submitted to the Secretary of the Board of Education at least fifteen days in advance

of the date requested. No reservation shall be valid until said application has been filed and approved in accordance with the provisions of these rules.

2. The use of school buildings and grounds after school hours shall be governed by Section 414 of the State Education Law and Section 4 of Article XI of the New York State Constitution.

3. All affairs in the public schools must be non-exclusive and open to the public without charge, except when the proceeds of such affair are to be devoted to the purposes set forth in Section 414 of the State Education Law.

4. When admission is charged the applicant shall be responsible for the payment of any and all State and Federal taxes.

5. Whenever school buildings or grounds are desired for school activities after 5:00 P. M. on school days or on Saturdays the same application shall be required.

6. School activities shall take precedence over any non-school activity.

7. All fees charged for the use of school buildings or grounds must be paid at least five days in advance of the date reserved, and no permits shall be postponed or cancelled by the applicant unless the request for such postponement or cancellation shall have been received and approved at least five days prior to the date stipulated in the permit.

8. All non-school organizations desiring to use school property shall be required to file with the Secretary of the Board of Education an approved form attesting that they are not subversive and fully conform to all provisions of statute and regulations as established by the State of New York and/or the Board of Education of the City of Yonkers, New York.

9. The custodian shall be the representative of the Board of Education and shall be responsible for the enforcement of the rules and regulations of the Board. The term "Custodian" as used herein, is intended to mean the head custodian of a building, or any member of his staff who is in charge of the building at the time of its use by any organization.

10. The permit shall include the services of the custodian and his assistants in the performance of their regular duties. These duties do not include the setting or aiding in setting up of scenery or special stage equipment, moving furniture or other heavy equipment. He may, however, be required to place chairs or tables where needed.

11. The showing of motion pictures in the public schools shall be subject to the following regulations:

a. Incandescent lamps exceeding 1000 watts may not be used.

b. Only safety film may be used. The use of 35 m.m. nitrous oxide film is forbidden. Any variation from this regulation must be approved by formal resolution of the Board of Education and written consent of the Chief of the Yonkers Fire Department.

c. All electrical installations must be in conformity with local and state fire and safety laws.

12. No cash prizes, drawing for cash, or playing of games for cash shall be permitted.

13. A building-use permit does not allow the subletting of any portion of the building.

14. Both the individual signing the application and the organization which he represents shall be held responsible for any breakage or damage to supplies, equipment, buildings or grounds.

15. Smoking, the use of intoxicants or profane or indecent language or conduct shall positively be prohibited in any and all parts of the school building.

16. The use of any building when not in use for school purposes and up to 5 P. M. on school days may be obtained upon approval of the principal of the school. No other approval is necessary except where admission is to be charged in which event the Secretary of the Board of Education shall be notified in advance as to the amount of said admission charge, in order that the Collector of Internal Revenue may be notified. The principal shall refer any questionable application to the Permit Committee, consisting of the Superintendent of Schools, the Deputy Superintendent of Schools, the Secretary of the Board of Education, for appropriate action.

17. The multiple use of school buildings shall be encouraged in order to effect more economical operation of the physical plant.

18. No school building may be used after 12:00 o'clock midnight.

19. Special permission from the Board of Education must be obtained for Sunday use of school property.

20. Athletic fields, for other than school activities, may be used only by special permission of the Board of Education.

21. There shall be no reduction of fees for summer use of school property.

22. The rental permit shall state the exact portion of building to be used and organizations shall be required to conform.

23. No member of the custodial staff may be required to work more than two nights per week for activities other than those which are associated with his regular duties.

Appendix C.

24. The Secretary of the Board of Education shall refer any questionable applications to the Permit Committee as outlined under rule No. 16.

25. The Board of Education expressly reserves the right to refuse, deny, or revoke the right to use public school property, whenever, or wherever such action or refusal is deemed by the Board of Education, in its sole judgment, to be in the best interests of the public schools.

26. All service and custodial fees collected under these regulations shall be credited to a revolving fund in a manner prescribed by and acceptable to the proper administrative officers of the City of Yonkers and the Board of Education of Yonkers, N. Y. Proceeds of such fund shall be used to pay custodial services and pay the cost of heat, light, fuel and custodial maintenance supplies.

27. The fees for the use of school buildings and property shall be as follows:

BUILDING USE FEES

Service Charges—after 5 P. M.

	Auditorium	*Gymnasium*	*First Classroom*	*Additional Classroom*	*Cafeteria*	*Kitchen*
Roosevelt High School Gorton High School Yonkers High School Commerce High School Saunders Trades School Hawthorne Jr. High School	$50.00	$20.00	$5.00	$2.50	$25.00	$2.00
Schools #1 and #26	10.00	10.00	5.00	2.50	25.00	2.00
All other schools	25.00	10.00	5.00	2.50	25.00	2.00

Service charges for rehearsals—one half the regular charge

Classrooms used in conjunction with auditorium, gymnasium or cafeteria facilities shall be at the rate for additional classrooms.

Appendix C.

Custodial Fees (per employee, regardless of multiple use of buildings)

$5.00 for the first three hours up to 11 P. M.—Monday through Friday

Overtime at the rate of $.75 each additional half hour up to 11 p. m. and $1.50 each half hour or fraction thereof after 11 P. M.

$3.00 per hour per man for Saturday, Sunday and Legal Holidays

The Recreation Commission, Boy Scouts, Girl Scouts and approved Civil Defense organizations shall not be charged a service fee for the use of any portion of a building except when admission is charged. When admission is charged the regular service fees shall be charged.

Organizations of the Yonkers Public Schools, Parent-Teachers Associations, Neighborhood Councils or Senior Councils of the Yonkers Public Schools shall not be charged a service fee at any time for any use of public school buildings.

Any Yonkers community organization whose objectives are educational, cultural, and non-profit making within the meaning of the Education Law may be granted exemption from, or reduction of, service fees, if upon special application, considered at a regular Board meeting, such reduction or waiver of fees is deemed by the Board of Education in its sole judgment, to be in the community interest.

SPECIAL REGULATIONS

Auditoriums:

Piano and normal stage equipment may be used by arrangement with the school custodian.

Where special piano tuning is required arrangements shall be made with the Director of Music.

Appendix C.

Special equipment such as scenery, projectors or public address system may not be used without special arrangement.

Special lighting equipment may be used when it is a permanent installation of the auditorium.

Special or additional lighting equipment may be used only under the supervision of a licensed electrician and all temporary wiring or changes in wiring must be approved by the Supervisor of Buildings of the Board of Education before operation will be permitted.

Gymnasium:

Rental of gymnasiums shall include the use of locker and shower rooms where available.

Special equipment or apparatus may not be used without special arrangement.

Cafeterias: (for use by outside groups for dinners, etc.)

School Cafeteria personnel shall be utilized as required at stated rates, arrangements for which must be made through the Director of School Lunch Programs.

Rental does not include use of the kitchen and cooking equipment without special permission obtained beforehand.

Kitchen Privileges:

This applies only to those schools having all purpose rooms.